UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA

In re:	)	
	)	
Richard Harold Farmer and Samantha Ann Farmer	)	Case No. 16-12447-whd
	)	
	)	Chapter 13
Debtors.	)	
	)	

RREF II CER-A-GA, LLC'S OBJECTION TO CONFIRMATION AND AMENDMENTS THERETO

COMES NOW Creditor RREF II CER-A-GA, LLC ("RREF"), pursuant to 11 U.S.C. §§ 1322 and 1325, and files this Objection to Confirmation to the Chapter 13 Plan filed by the Debtors and Amendments Thereto, and in support thereof states as follows:

1. On December 5, 2016, the Debtors filed their voluntary Chapter 13 Petition. (ECF#1).

2. The Debtors' Schedule A (ECF#1) lists real property located at 3586 W Hwy 166, Carrollton GA 30117-0000 ("Real Property"). The Debtors value the Real Property on Schedule A (ECF#1) at $67,0001.00.

3. The Debtors' Schedule C (ECF#1) claims the Real Property as exempt pursuant to O.C.G.A. § 44-13-100(a)(1).

4. The Debtors' Schedule D (ECF#1) lists Quantum Servicing[1] as having a secured claim in the amount of $40,750.00.

5. The Debtors' Schedule J (ECF#1) lists monthly net income in the amount of $363.00.

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[1] Quantum Mortgage is RREF's servicer.

6. The Debtors' Chapter 13 Plan (ECF#2) was filed on December 5, 2016 (the "Plan"). The Plan proposes to pay the sum of $363.00 per month and pay $114.00 per month to "Quantum Mortgage."

7. On January 13, 2017, the Debtors' filed the Debtors' First Pre-Confirmation Amendment to Plan (ECF#15) which states that the Debtors will increase plan payments to $950.00 and will include the that the mortgage owed to Quantum Servicing shall be paid "in full through the Chapter 13 at contract interest of 6% and monthly payment amount of 500.00".

8. On January 13, 2017, the Debtors' filed their Amended Schedule J (ECF#16) which lists monthly net income in the amount of $950.00.

9. On January 31, 2017, the Chapter 13 Trustee filed the Objection to Confirmation and Motion to Dismiss (ECF#21).

10. On February 1, 2017, RREF filed its secured Proof of Claim 5-1 in the amount of $38,363.33, with post-petition interest to continue to accrue at 6%. Within secured Proof of Claim, RREF reserved its right to additional post-petition fees and costs pursuant to, *inter alia*, the loan documents and 11 U.S.C. § 506.

11. On March 17, 2017, the Court entered the Order Continuing Hearing on RREF II CER-A-GA, LLC's Objection to Confirmation and Amendments thereto and Motion to Dismiss (ECF#28). The order stated that the debtors "shall amend their Chapter 13 plan to provide for payment of the full amount of RREF II CER-A-GA, LLC's claim plus interest at six percent (6%) per annum over the sixty (60) month period of the plan and without any balloon payment."

12. On April 11, 2017, the Debtors filed the Debtors' Second Pre-Confirmation Amendment to Plan (ECF#134) which states that the Debtors will increase plan payments to $980.00 per month of 36 months and will include the that the mortgage owed to Quantum

Servicing shall be paid "in full through the Chapter 13 at contract interest of 6% and monthly payment amount of 500.00".

13. Accordingly, RREF objects to the Plan and Amendments because the Plan and Amendments violate 11 U.S.C. §§ 1322 and 1325.

Objection for Failure to Comply with Courts

14. The Order Continuing Hearing on RREF II CER-A-GA, LLC's Objection to Confirmation and Amendments thereto and Motion to Dismiss (ECF#28) is clear and unequivocal. The Debtors "shall amend their Chapter 13 plan to provide for payment of the full amount of RREF II CER-A-GA, LLC's claim plus interest at six percent (6%) per annum over the sixty (60) month period of the plan and without any balloon payment."

15. Here, the Debtors have failed and/or refused to comply with the Order Continuing Hearing on RREF II CER-A-GA, LLC's Objection to Confirmation and Amendments thereto and Motion to Dismiss (ECF#28). The Plan and amendments thereto do not propose to pay RREF in full.

16. Accordingly, the Plan should not be confirmed.

Objection Pursuant to 11 U.S.C. § 1325(a)(5)(B)(iii)(I) and 11 U.S.C. § 1322(b)(2)

17. 11 U.S.C. § 1325(a)(5)(B)(iii)(I) provides a plan may, with respect to each allowed secured claim provided for by the plan--, with respect to each allowed secured claim provided for by the plan--

> (B) (iii) if--
>
> > (I) property to be distributed pursuant to this subsection is in the form of periodic payments, such payments shall be in equal monthly amounts; and

18. Secured creditors must be accorded full present value of their claims in exchange for being forced to accept deferred payment and for losing any rights against the collateral during

a plan. *In re Senior*, 255 B.R. 794, 797 (Bankr. M.D. Fla. 2000) (citing *United States v. Southern States Motor Inns, Inc. (In re Southern States Motor Inns, Inc.),* 709 F.2d 647 (11th Cir. 1983) (addressing the present value requirement of 11 U.S.C. § 1129(a)(9), a cram-down provision analogous to § 1325(a)(5)(B)(ii)). The Eleventh Circuit has held that creditors who are forced to receive deferred payments in lieu of contractual payments or collateral foreclosure should receive interest on the secured portions of their claims at the prevailing market rate. *See Southern States,* 709 F.2d at 652–653.

19. The Debtors do not propose to pay RREF its claim in full. Courts have held that monthly payments with final balloon payment cannot be confirmed over creditor's objection, as the balloon payment cannot satisfy the equal monthly amounts requirement of 11 U.S.C. § 1325(a)(5)(B)(iii)(I). Overwhelmingly, courts have held that by its very terms, a balloon payment is not equal to the payment that preceded it, and thus violates § 1325(a)(5)(B)(iii)(I) with respect to periodic payments on a secured claim under a chapter 13 plan. *In re Denton*, 370 B.R. 441 (Bankr. S.D.Ga. 2007); *In re Williams*, 385 B.R. 468 (Bankr. S.D. Ga. 2008); *In re Hamilton*, 401 B.R. 539, 543–44 (1st Cir. BAP 2009); *In re Spark*, 509 B.R. 728, 729–30 (Bankr. M.D.Fla. 2014); *In re Holifield*, 2014 WL 948828, at *1 n. 3 (Bankr. D.Or. Mar. 12, 2014); *In re Kirk*, 465 B.R. 300, 303 (Bankr. N.D.Ala. 2012); *In re Soppick,* 516 B.R. 733, 765 (Bankr. E.D. Pa. 2014); *In re Flynn,* 402 B.R. 437 (B.A.P. 1st Cir. 2009).*In re Carman*, 2008 WL 2909863, at *1 (Bankr. D.Mass. July 25, 2008); *In re Wallace*, 2007 WL 3531551 (Bankr. M.D.N.C. Nov. 12, 2007); *In re Luckett*, 2007 WL 3125278, at *2; *In re Newberry*, 2007 WL 2029312, at *3–4 (Bankr. D.Vt. July 10, 2007); *In re Lemieux*, 347 B.R. 460, 463 (Bankr. D.Mass. 2006); *In re Wagner*, 342 B.R. 766, 772 (Bankr. E.D.Tenn. 2006); *In re DeSardi*, 340 B.R. 790, 805 (Bankr. S.D.Tex. 2006).

20. Further, pursuant to 11 U.S.C. § 1322(b)(2), the Plan may not modify the rights of secured claims secured only by a security interest in real property that is the Debtors' principal residence. By only paying the monthly amount of $500.00 per month at 6% but not paying the claim in full as agreed, the Debtors are attempting to modify the secured rights of RREF.

21. Here, with the Debtors providing for $500.00 per month payments and to be paid in full, the Debtors are inherently arguing that they seek a balloon payment of all outstanding indebtedness at the end of the Plan. This is not permitted under the Bankruptcy Code, as the balloon payment is not equal to the preceding payments and therefore it is prohibited by 11 U.S.C. § 1325(a)(5)(B)(iii)(I).

Objection Pursuant to 11 U.S.C. § 1325(a)(6)

22. 11 U.S.C. § 1325(a)(6) provides that the Court shall confirm a plan if the debtor will be able to make all payments under the plan and to comply with the plan. As the Debtors fail to include monthly expenses for real property insurance and taxes, the Plan is not feasible. The Debtors do not have sufficient income to make the correct fully payment to RREF and escrow funds for real property insurance and taxes.

23. Accordingly, the Plan fails to comply with 11 U.S.C. § 1325(a)(6).

Conclusion

24. For the reasons stated above, the Plan and Amendments fail to meet the confirmation standards of 11 U.S.C. §§ 1322 and 1325, including 11 U.S.C. § 1325(a)(5)(B)(iii)(I)'s requirement that there be equal monthly payments. The deficiencies in the Debtors' Plan and Amendments set forth in this objection are intended to be non-exhaustive.

25. As the Debtors are unable to comply with 11 U.S.C. §§ 1322 and 1325, RREF respectfully requests that the Court dismiss the Debtors' bankruptcy case with prejudice.

26. RREF reserves its right to additional post-petition fees and costs pursuant to, *inter alia*, the loan documents and 11 U.S.C. § 506.

WHEREFORE, RREF II CER-A-GA, LLC respectfully requests that the Court enter an Order denying confirmation of the Debtors' Chapter 13 Plan and amendments thereto, dismissing the Debtors' bankruptcy case with prejudice, plus grant such other and further relief as the Court deems just and proper.

DATED: April 12, 2017. Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on April 12, 2017, a true and correct copy of the foregoing was served on the parties listed below and on the attached mailing matrix via ECF or first class U.S. mail.

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Label Matrix for local noticing
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Fri Feb 3 11:54:22 EST 2017

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The preferred mailing address (p) above has been substituted for the following entity/entities as so specified by said entity/entities in a Notice of Address filed pursuant to 11 U.S.C. 342(f) and Fed.R.Bank.P. 2002 (g)(4).

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The following recipients may be/have been bypassed for notice due to an undeliverable (u) or duplicate (d) address.

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End of Label Matrix
Mailable recipients 71
Bypassed recipients 2
Total 73